



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2012-N230; FXES11120100000F2-123-FF01E00000]

**Draft Habitat Conservation Plan and Application for an Incidental Take Permit,
Yamhill County, Oregon**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Yamhill County (County) for an incidental take permit (permit) pursuant to the Endangered Species Act of 1973, as amended (ESA). The County's application requests a 30-year permit that would authorize "take" of the endangered Fender's blue butterfly incidental to otherwise lawful activities associated with county road maintenance and prairie habitat management activities. The application includes the County's draft habitat conservation plan (HCP), which describes the actions the County will implement to minimize and mitigate the impacts of incidental take of the Fender's

blue butterfly caused by covered activities. We invite public comment on the application and draft HCP, and the Service's draft environmental action statement (EAS) and preliminary determination that the draft HCP qualifies for a categorical exclusion under the National Environmental Policy Act (NEPA).

DATES: Written comments on the HCP and categorical exclusion determination must be received from interested parties no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may download copies of the draft HCP and EAS and obtain additional information on the Internet at <http://www.fws.gov/oregonfwo/ToolsForLandowners/HabitatConservationPlans/>. You may submit comments and requests for documents or more information by any of the following methods.

- *Email:* OFWocomment@fws.gov. Include "Yamhill County HCP" in the subject line of the message.
- *U.S. Mail:* State Supervisor, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266.
- *In-Person Drop-off, Viewing, or Pickup:* Call 503-231-6179 to make an appointment (necessary for view/pickup only) during regular business hours at the above address. Comments and materials received will also be available for public inspection by appointment.

FOR FURTHER INFORMATION CONTACT: Richard Szlemp, U.S. Fish and

Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone: 503–231–6179; facsimile: 503–231–6195.

SUPPLEMENTARY INFORMATION:

Background Information

Section 9 of the ESA and Federal regulations prohibit the “taking” of a species listed as endangered or threatened. Under the ESA (16 U.S.C. 1531 et seq.), the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” “Harm” is defined by the Service to include significant habitat modification or degradation that results in death or injury of listed species by significantly impairing their essential behavioral patterns, including breeding, feeding, and sheltering.

The Service may issue permits, under limited circumstances, to take listed species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Service regulations governing permits for endangered species are found in 50 CFR 17.22, and regulations governing permits for threatened species are found in 50 CFR 17.32. Section 10(a)(1)(B) of the ESA contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant will develop a proposed HCP and ensure that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the applicant will carry out

any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Although take of listed plant species is not prohibited under the ESA, and therefore an incidental take permit to authorize such take is not required, listed and non-listed plant species, as well as non-listed animal species, may be included on a permit if they are treated as if they are listed for purposes of meeting the issuance criteria for an incidental take permit should the species become listed or the ESA is amended to prohibit the take of plants. All listed species included in the incidental take permit for which the HCP meets the issuance criteria would receive assurances under our “No Surprises” regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Proposed Action

If all of the issuance criteria described above for an incidental take permit are met, the Service will issue a permit with a 30-year term to Yamhill County that would authorize incidental take and provide regulatory assurances for potential impacts on the Fender’s blue butterfly (*Icaricia icarioides fenderi*), which is federally listed as endangered. The permit would also provide regulatory assurances to the County for impacts caused by HCP-covered activities to the butterfly’s larval host plant, the Kincaid’s lupine (*Lupinus oreganus*), which is federally listed as threatened, should the ESA be amended to include take prohibitions for listed plants during the 30-year proposed term of the permit and HCP, provided the County’s HCP provisions for the lupine meet the issuance criteria for a permit. The butterfly and the lupine represent the covered species under this HCP. The area that would be covered under the permit consists of all rights-of-way (approximately 4,943 acres) currently managed by the County and County-owned Deer Creek Park (30 acres) in Yamhill County, Oregon.

Activities that would be covered under the HCP include: (1) work within county road rights-of-way; (2) habitat restoration, enhancement, and management (including monitoring and plant material collection) activities; and (3) emergency response activities.

In the HCP, the county road right-of-way is divided into two sections for the purposes of impact analysis: (1) The “potential impact zone,” which consists of the first 5 feet from the shoulder of the road; and (2) the “no impact zone,” which typically consists of the next remaining 15-foot portion of the right-of-way. While referred to as the “no impact zone,” there will be some impact to the covered species in this area, although they are identified as being mostly positive.

Road maintenance activities will occur along 1.02 miles, or 4.90 acres, of Fender’s blue butterfly critical habitat, in units FBB-1 and FBB-2. Road maintenance activities will occur along 1.03 miles, or 5.31 acres, of Kincaid’s lupine critical habitat, in units KL-2, KL-3, and KL-4. Critical habitat for the Kincaid’s lupine is mostly coincident with critical habitat for the Fender’s blue butterfly.

The analysis in the HCP estimates adverse impacts over the 30-year permit term to 3.48 acres of Fender’s blue butterfly and Kincaid’s lupine habitat in the potential impact zone of the right-of-way. The analysis in the HCP also estimates that if up to eight additional Fender’s blue butterfly locations were found along the right-of-way in the future, and if all of the area in the impact zone contained nectar plants, there could be effects to butterfly and lupine habitat in the potential impact zone of up to 20.16 acres. However, because the distribution of the Fender’s blue butterfly would not be limited to the right-of-way, the analysis in the HCP assumes that other nectar sources would be available to the butterfly such that the above effects to nectar plants would be minor or negligible, and, therefore, incidental take of the butterfly would not be likely to occur.

The HCP includes the following measures to conserve habitat, and to avoid and minimize the impacts caused by incidental take of the two covered species:

1. Establishing Special Maintenance Zones where the Fender's blue butterfly and the Kincaid's lupine or their designated critical habitats are known to occur on lands within the County right-of-way. The Special Maintenance Zones total 14.14 miles, with an added 0.31-mile buffer on each end of those locations where potential habitat for the two covered species exists.
2. Implementing avoidance and minimization measures for roadside populations of the covered species within the Special Maintenance Zones. The County will mow in the Special Maintenance Zones between August 15 and March 1 to reduce potential adverse effects to the covered species by avoiding the active butterfly and caterpillar season for the Fender's blue butterfly, and the reproductive period for the Kincaid's lupine. Tractor mower decks will be set at a minimum of 6 inches above the ground to reduce potential effects on butterfly larvae.
3. Managing a portion of the road right-of-way within the Special Maintenance Zones to benefit the covered species. Invasive species will be removed to reduce competition with native species. A native grass seed mixture will be used in the Special Maintenance Zones when revegetating disturbed or bare areas.
4. Restricting normal gravel road maintenance activities (i.e., grading and contouring) to the gravel road surface and slope from the edge of the shoulder to the bottom of the ditch or to the bottom of the roadway fill. This will avoid the area where Kincaid's lupine and consequently Fender's blue butterfly most often occur.
5. Designating and managing conservation areas for the covered species on County land, which includes at least 1 acre at Deer Creek Park.

Mitigation under the HCP would be directly provided at a 2 to 1 acreage ratio

(i.e., 6.96 acres for 3.48 acres of impact), through habitat maintenance, enhancement, and avoidance measures in the “no impact zone” of the right-of-way and at the County-owned Deer Creek Park. Additional benefits to the covered species would occur in the “no impact zone” due to habitat enhancement activities, such as brush control, and other actions intended to reduce plant competition with native nectar plants, and the Fender’s blue butterfly larval host plant, Kincaid’s lupine.

National Environmental Policy Act Compliance

As described in our EAS screening form for low-effect HCP determinations, we have made the preliminary determination that approval of the proposed HCP and issuance of the permit would qualify as a categorical exclusion under NEPA (42 U.S.C. 4321 et seq.), as provided by Federal regulations (40 CFR part 1500, 5(k), 1507.3(b)(2), 1508.4), the Department of the Interior Manual (516 DM 2 and 516 DM 8) and our Habitat Conservation Planning Handbook (November 1996). Low-effect HCP determinations are based on the following three criteria: (1) Implementation of the proposed plan would result in minor or negligible effects on federally listed species and their habitats; (2) implementation of the proposed plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We particularly seek comments on the following: (1) Biological data or other information regarding the two covered species; (2)

additional information concerning the range, distribution, population size, and population trends of the covered species; (3) current or planned activities in the subject area and their possible impacts on the covered species; (4) the presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and (5) identification of any other environmental issues that should be considered with regard to the proposed development and permit action.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing the EAS, will be available for public inspection by appointment, during normal business hours, at the Service's Oregon Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

The Service will evaluate the permit application, associated documents, and public comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1)(B) of the ESA and NEPA regulations. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all comments received during the comment

period. If we determine that all requirements are met, we will issue an incidental take permit under section 10(a)(1)(B) of the ESA to the County for the take of the Fender's blue butterfly, incidental to otherwise lawful activities, caused by covered activities.

Authority

We provide this notice pursuant to the requirements of: section 10(c) of the ESA (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR 17.22); and NEPA and its implementing regulations (40 CFR 1506.6).

Dated: _____ October 1, 2012 _____

Paul Henson,
State Supervisor, Oregon Fish and Wildlife Office,
Pacific Region, U. S. Fish and Wildlife Service,
Portland, Oregon.

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